

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10432 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

UNION OF INDIA

Versus

CHHATRASINGH SAHEBABHAI

Appearance:

MR MUKESH R SHAH for Petitioner Nos. 1-2
MR SUNIL S JOSHI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/08/2003

ORAL JUDGEMENT

Rule. Mr.Sunil Joshi waives service of rule on
behalf of the respondent.

With the consent of the parties, the matter is
taken up for final hearing today.

By filing this petition, the petitioners have challenged the Award passed by the Industrial Court (Central), Ahmedabad in Reference (ITC) No.100 of 1999. By Award dated 24th July, 2002, the Tribunal allowed the said Reference of the respondent-workman and it is directed that the concerned workman be reinstated in service with full back wages. The case of the workman before the Tribunal is that even though he had worked for more than 240 days, without following the procedure prescribed under the Industrial Dispute Act, his services were terminated with effect from 1.1.1988, that he was not given any show cause notice nor any notice pay before passing the order, terminating his services, and by an oral order, his services were put to an end.

Before the Tribunal, on behalf of the petitioners, the matter was not contested. Even though reply was filed on behalf of the petitioners, the benefit of cross-examination was not availed of by the petitioners.

The Tribunal, after considering the evidence of the respondent-workman, came to the conclusion that the concerned workman has served for more than 240 days and, accordingly, allowed the Reference with full back wages.

Mr.Shah, learned Advocate for the petitioners, submitted that the respondent-workman had not completed 240 days and he submitted that, as per the certificate produced by the workman, it can be said that he had allegedly worked for 240 days between 1.4.1987 and 30.12.1987, and for the rest of the years, there is no evidence to show that he has completed 240 days.

However, at the time of hearing, a suggestion was made by the respondent that he is willing to forgo part of the back wages in case he is reinstated in service. Mr.Shah for the petitioners, after taking instructions, submitted that, on principle, the petitioners have no objection in accepting the said suggestion. However, he submitted that he has not been furnished with any written instructions in this behalf by the Department.

The Tribunal, after appreciating the evidence on record, has reached the aforesaid conclusion, and passed the Award, reinstating the workman in service with full back wages. Considering the facts and circumstances of the case, the order of the Industrial Court (Central) so far as it relates to reinstating the respondent is concerned, the same is not required to be interfered with by this Court in its extraordinary jurisdiction under

Article 226/227 of the Constitution of India. So far as the payment of back wages is concerned, the said order is required to be modified. Learned Advocate for the respondent has fairly agreed that he is forgoing 90% claim regarding back wages and he submitted that he will not press the recovery application which has been filed for executing the Award. So far as back wages is concerned, the workman will be entitled only to 10% back wages.

The order of the Industrial Tribunal is modified to the aforesaid extent.

In view of this, now, the petitioners may reinstate the respondent, as early as possible, and, in any case, within a period of one month from today. Whatever benefits which are required to be paid to the respondent, also may be paid by the aforesaid date. It is clarified that the order of the Labour Court is modified to the extent indicted above, by awarding only 10% back wages, and for the rest, the impugned Award is confirmed.

Rule is made absolute to the aforesaid extent, with no order as to costs.

(P.B. Majmudar, J.)

(apj)